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Hospital General Menonita and Federacio Central De Trabajadores, UFCW, Local 481, AFL-CIO.
Case 24-CA-9690

November 26, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative of the Respondent's registered nurses in the underlying representation proceeding. Pursuant to a charge filed on September 4, 2003,¹ the General Counsel issued the complaint on October 2, 2003, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 24-RC-8204. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On October 28, 2003, the General Counsel filed a Motion for Summary Judgment. On October 30, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On November 19, 2003, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits that it has refused to bargain with the Union, but contests the validity of the certification based on its contentions in the underlying representation proceeding that the registered nurses are statutory supervisors and that the Union engaged in objectionable conduct affecting the results of the election.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine

¹ Although the Respondent's answer states that Respondent is without knowledge as to the date the charge was served, it does not deny that the charge was filed or that it received a copy of the charge.

the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times herein, the Respondent, a corporation duly authorized to do business in the Commonwealth of Puerto Rico with an office and place of business in Cayey, Puerto Rico (the Respondent's facility), has been engaged in the operation of a hospital providing inpatient and outpatient medical care services.

In conducting its business operations as described above, the Respondent has annually derived gross revenues in excess of \$250,000. In the normal course and conduct of its business operations described above, the Respondent has annually purchased and received at its place of business in Cayey, Puerto Rico, goods and materials valued in excess of \$50,000 directly from points located outside the Commonwealth of Puerto Rico and caused them to be delivered directly to its facility.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.³

² Chairman Battista and Member Walsh did not participate in the Board's original April 3, 2002 Order denying the Respondent's request for review of the Regional Director's Decision and Direction of Election in the representation proceeding, which addressed the supervisory issue. However, they participated in the Board's subsequent, August 6, 2003 decision, which adopted the hearing officer's recommendation to overrule the Respondent's objection to the election and certified the Union. Further, they agree that the Respondent has not raised any new matters or special circumstances warranting a hearing in this proceeding or reconsideration of the Board's rulings in the representation proceeding, and that summary judgment is appropriate.

³ The Respondent's answer neither admits nor denies these allegations, asserting that they are conclusions of law. However, the Respondent has admitted the underlying factual allegations, set forth above, which clearly establish that the Respondent is engaged in commerce within the meaning of Sec. 2(2), (6) and (7) of the Act and is a health care institution within the meaning of Sec. 2(14) of the Act. See *East Oakland Health Alliance*, 218 NLRB 1270 (1975) (setting \$250,000 gross-revenue standard for hospitals). Moreover, as noted by the General Counsel, the Respondent stipulated at the prehearing in the underlying representation proceeding that it is an employer engaged in commerce and that the Union is a labor organization within the meaning of the Act. Accordingly, we find that the Respondent's answer has not raised any issue warranting a hearing with respect to these allega-

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held March 21, 2002, the Union was certified on August 6, 2003, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

INCLUDED: All registered nurses employed by the Employer at its Cayey, Puerto Rico facility.

EXCLUDED: All managerial employees, all other employees, all guards, area supervisors, general supervisors and all other supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since about August 13, 2003, the Union has requested the Respondent to bargain, and, since about August 22, 2003, the Respondent has failed and refused to do so. We find that the Respondent's conduct constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after August 22, 2003, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).⁴

tions. See *All American Services & Supplies*, 340 NLRB No. 37 (2003).

⁴ The record in the underlying representation proceeding indicates that the Notices of Election were posted in Spanish. Further, bilingual notices are customary in Region 24. See, e.g., *Hospital Del Maestro*,

ORDER

The National Labor Relations Board orders that the Respondent, Hospital General Menonita, Cayey, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Federacion Central De Trabajadores UFCW, Local 481, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

INCLUDED: All registered nurses employed by the Employer at its Cayey, Puerto Rico facility.

EXCLUDED: All managerial employees, all other employees, all guards, area supervisors, general supervisors and all other supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Cayey, Puerto Rico, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 24 after being signed by the Respondent's authorized representative, shall be translated into Spanish, and both Spanish and English notices shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former

323 NLRB 93, fn. 2 (1997); and *Union de Empleados*, 191 NLRB 770, fn. 1 (1971), *enfd.* 455 F.2d 1248 (1st Cir. 1972). Accordingly, we shall order the Notice to Employees to be posted in both English and Spanish.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

employees employed by the Respondent at any time since August 22, 2003.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 26, 2003

Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Dennis P. Walsh,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the

National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Federacion Central De Trabajadores UFCW, Local 481, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

INCLUDED: All registered nurses employed by us at our Cayey, Puerto Rico facility.

EXCLUDED: All managerial employees, all other employees, all guards, area supervisors, general supervisors and all other supervisors as defined in the Act.

HOSPITAL GENERAL MENONITA